

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

LIMELIGHT NETWORKS, INC.,
Plaintiff,

v.

Civil Action No. 3:15-cv-720-JAG

XO COMMUNICATIONS, LLC
and AKAMAI TECHNOLOGIES, INC.,
Defendants.

ORDER

This matter comes before the Court on its own initiative. Limelight Networks, Inc. (“Limelight”) has brought an action in the Chancery Court of the State of Delaware seeking injunctive relieve, declaratory judgment, and restitution based on statements made at this Court’s January 11, 2017, evidentiary hearing.

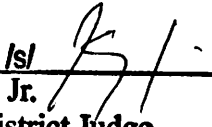
The parties in this case entered into a settlement agreement in a prior unrelated lawsuit. At the evidentiary hearing in this case, counsel for Limelight said it had no objection to discussing that settlement agreement before the Court, so long as the information never reached the jury. The Court then directed that neither side may use the prior settlement at trial, if the settlement agreement prohibited such use, unless the other party somehow opened the door. Akamai even made clear that it has no intention of doing so. Yet, despite this colloquy spanning pages of transcript and hundreds of keystrokes by the diligent court reporter, Limelight seeks an order from another court preventing Akamai from doing exactly Akamai itself said that it would not do. Limelight also seeks declaratory relief finding that Akamai breached the settlement agreement even though Mr. Powers said that he had no objections to Akamai’s use of the agreement before this Court.

This Court has grave concerns with parties taking inconsistent positions on identical issues in different courts. The Court, therefore, DIRECTS Limelight's counsel to explain how, despite their position at the hearing, Limelight chose to file litigation in Delaware. Counsel should address how this is not merely an attempt by Limelight to harass Akamai and build litigation costs. Specifically, the Court wants to hear from Limelight's counsel in the Delaware case why such action is appropriate given Mr. Power's statements at the evidentiary hearing.

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record.

Date: February 3, 2017
Richmond, VA



John A. Gibney, Jr.
United States District Judge